

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
)	
Petition of the Verizon Telephone Companies)	WC Docket No. 08-49
for Forbearance Pursuant to 47 U.S.C. § 160(c))	
in Cox's Service Territory in the Virginia Beach)	
Metropolitan Statistical Area)	

**OPPOSITION OF CBeyond INC., INTEGRA TELECOM, INC.,
ONE COMMUNICATIONS CORP., AND TIME WARNER TELECOM INC.**

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Cbeyond Inc. ("Cbeyond"), Integra Telecom, Inc. ("Integra Telecom"), One Communications Corp. ("One Communications"), and Time Warner Telecom Inc. ("TWTC"),¹ (collectively, the "Joint Commenters"), by their attorneys, oppose the petition for forbearance from unbundling and other regulations filed by the Verizon Telephone Companies ("Verizon") in the above referenced docket ("Petition").² As discussed below, the Joint Commenters oppose Verizon's Petition to the extent that it seeks forbearance from unbundling and other regulations governing access to Verizon local loop and transport facilities needed to serve business customers.

¹ Time Warner Telecom Inc. amended its Certificate of Incorporation effective March 12, 2008 to change its name to tw telecom inc. in preparation for a broader name change that will be effective July 1, 2008. The company will continue to use and be known as Time Warner Telecom Inc., its trade name, until July 1, 2008.

² See *Pleading Cycle Established For Comments On The Verizon Telephone Companies Petition for Forbearance In The Virginia Beach Metropolitan Statistical Area*, Public Notice, DA 08-878, WC Dkt. No. 08-49 (rel. Apr. 15, 2008).

I. INTRODUCTION AND SUMMARY.

In filing its petition for forbearance from dominant carrier and unbundling regulations in Cox's service territory within the Virginia Beach metropolitan statistical area ("MSA"), Verizon has once again demonstrated both its astonishing sense of entitlement and the fundamental flaws with the forbearance process. Verizon filed the instant petition less than four months after the Commission unanimously denied Verizon's petition seeking forbearance from exactly the same regulations in the same geographic area (Cox's service territory in the Virginia Beach MSA is obviously part of the larger Virginia Beach MSA) in the *6-MSA Order*. The Commission reached this conclusion based on an analysis of almost exactly the same market evidence that Verizon proffers in support of the instant petition. Verizon apparently believes, however, that it has so much political throw-weight that it can bully the Commission into changing the Commission's forbearance standard so that the same facts that were insufficient to satisfy the forbearance test last time, will be sufficient to satisfy the test this time. Of course it is the forbearance provision itself, and the absence of meaningful procedural regulations governing forbearance petitions more generally, that offer Verizon the opportunity to file and refile essentially the same petitions in an attempt to wear down the Commission and force it eventually to grant the relief sought.

The Commission must not allow itself to be strong-armed and manipulated in this fashion. As the Joint Commenters, and other CLECs, explained in their pending Motion to Dismiss, the Commission need not and should not even address Verizon's arguments. Basic principles of issue and claim preclusion prevent Verizon from seeking the same relief based on the same facts in multiple petitions. By dismissing the instant petition based on these principles, the Commission can go some way toward rationalizing and controlling the forbearance process.

If it does consider the merits of the instant petition, the Commission must deny it. *First*, the Commission should reject Verizon's attempts to radically alter the Commission's analytical framework to favor Verizon. For example, there is no basis for Verizon's assertion that the Commission should assess competitors' market share in Cox's service territory in the Virginia Beach MSA, rather than (as Verizon previously proposed) the entire Virginia Beach MSA. Verizon has no reason for proposing this change other than that there is purportedly more facilities-based competition in Cox's service territory in the Virginia Beach MSA than in other parts of the Virginia Beach MSA. But the Commission must choose geographic markets based on a principle other than a petitioner's gerrymandering in order to have its petition granted. MSAs are coherent, integrated population centers, and the Commission has at least twice held that competitors plan their entry on an MSA-by-MSA basis. Verizon has offered no reason to doubt that this is correct or that whole MSAs remain the appropriate geographic market for considering market share. There is also no reason to adopt Verizon's proposal that the Commission utilize rate centers instead of wire centers when assessing network coverage. Wire centers, which the Commission has used in the past, are smaller than rate centers and are therefore likely to yield more reliable assessments of facilities deployment.

The Commission should reject Verizon's proposals to skew the market share and coverage thresholds in favor of forbearance. To begin with, the Commission should reject Verizon's argument that market share is irrelevant. It is obviously appropriate for the Commission to consider the extent to which facilities-based competitors have been successful in competing when assessing whether UNEs remain necessary to protect consumers and to ensure reasonable rates. In addition, the Commission should reject Verizon's suggestion that customers that cut-the-cord in favor of Verizon Wireless should be counted as competitors' customers or

removed entirely from the analysis. The Commission has found that ILECs have powerful incentives to favor their wireless affiliates and to view wireline and wireless services as offerings of a single, integrated firm. Verizon has offered no basis for revisiting this conclusion. The Commission should reject Verizon's argument that competitors served *via* special access should be included in competitors' market share since, as the Commission has found, Verizon's special access prices are constrained by the availability of the UNEs for which Verizon seeks forbearance. In addition, the Commission should again reject Verizon's argument that over-the-top VoIP customers should be included in competitors' market share. The Commission rejected this proposal in the *6-MSA Order*, and Verizon has offered no basis for revisiting that conclusion here.

The Commission should also reject Verizon's argument that the Commission must grant forbearance for any network elements for which the Commission determines that competitors are unimpaired in this proceeding. The Commission has held that it does not even have the authority to make impairment determinations in a forbearance proceeding; it can only make such determinations in a rulemaking proceeding. In a forbearance proceeding such as this, the Commission must apply the forbearance standard. Verizon's argument is therefore irrelevant to this proceeding.

Second, there should be no doubt that Verizon has failed to meet the standards the Commission has applied in the past for determining whether there is sufficient facilities-based competition to grant forbearance from unbundling requirements. Indeed, none of the information submitted by Verizon regarding market share or network coverage is reliable or persuasive. Verizon relies on white pages as a proxy for access lines to measure market share and, in so doing, it assumes that Cox also has the nearly 1:1 residential access line-to-white page listings

ratio Verizon claims to have. But there is no basis for this assumption. Qwest has stated that only 75 percent of its residential access lines have white page listings. If there is a 25 percent differential in the residential access line-to-white page listing ratio between Verizon and Qwest, a similarly large differential likely exists between and among Verizon, Cox and other competitors. This is simply too large a margin to make white pages a reliable proxy for access lines. But even if Verizon's market share data is accurate, it is of the same vintage as the market share data the Commission deemed insufficient to justify forbearance in its review of Verizon's previous Virginia Beach MSA petition, thus warranting the same result here.

Furthermore, to the extent that the Commission considers cut-the-cord wireless customers in its market share analysis, it should not accept Verizon's argument that 13.6 percent of residents in Cox's service territory in the Virginia Beach MSA have cut the cord. As explained herein, the 13.6 percent nationwide cut-the-cord estimate provided by the December 2007 CDC Survey may be inflated. In all events, the most appropriate means of counting cut-the-cord percentages in Cox's service territory in the Virginia Beach MSA is to rely on the actual number of customers that have cut the cord—a figure absent in the record.

Verizon has also failed to proffer information necessary to show that competitors satisfy the network coverage test applied by the Commission. Under that test, the Commission determines whether competitors' facilities-based networks reach 75 percent of all residential and business end-user locations in a wire center. But Verizon has only submitted information concerning Cox's network coverage among residential end users. This is clearly insufficient.

Perhaps the clearest illustration of the absence of competition in Cox's service territory in the Virginia Beach MSA is the manner in which Verizon has exercised its market power in the provision of services to business customers. A review of Verizon's state tariff filings reveals that

Verizon has repeatedly increased rates for services demanded by business customers. It has done so while DS-1 and DS-3 loops and transport facilities are available as UNEs. If those facilities are no longer available as UNEs, Verizon will have even greater freedom to unilaterally increase prices. Not surprisingly, Verizon is not able to offer any substantial evidence that either cable companies or traditional CLECs offer meaningful facilities-based competition in the business market.

Third, the Commission should modify the manner in which it measures competitors' market share and network coverage to accord with sound competition policy. In particular, the Commission should revisit its conclusion that wireless telephone services should be considered in the same product market as wireline services. In coming to that conclusion in the *6-MSA Order*, the FCC merely relied on its prior "analysis" in the *Verizon/MCI Merger Order* and the *AT&T/BellSouth Merger Order*, but the Commission's reasoning in the *Merger Orders* must now be rejected. Most obviously, earlier this month, in the *CETC Interim Cap Order*, the Commission concluded that "the majority of households do not view wireline and wireless services to be direct substitutes." Moreover, even if a small minority of households do view mobile wireless as a substitute for wireline voice service, this does not mean that mobile wireless service belongs in the same product market as wireline voice service. Accordingly, the customers who have cut the cord and rely on wireless voice service exclusively should not be included in the mass market share calculation for Cox's service territory in the Virginia Beach MSA. But even if the FCC includes mobile wireless in the wireline voice market, it must exclude cut-the-cord wireless customers of ILEC-affiliated wireless carriers such as AT&T Mobility from its market share calculation.

The Commission must modify its analytical framework in other ways as well. It should not include customers served *via* Verizon’s “Wholesale Advantage” product in the “competitors” market share, since Wholesale Advantage loop prices are constrained by the availability of the unbundled loops from which Verizon seeks forbearance. Moreover, it is imperative that the Commission conduct a separate market share analysis for the business market when considering whether to retain unbundling requirements for DS-1 and DS-3 loops needed to serve businesses.

II. THE COMMISSION SHOULD REJECT VERIZON’S PROPOSALS TO SKEW THE FRAMEWORK FOR ANALYZING UNE FORBEARANCE PETITIONS IN ITS FAVOR.

A. There Is No Basis For Departing From The FCC’s Precedent Of Using Metropolitan Statistical Areas (“MSAs”) And Wire Centers As Relevant Geographic Markets.

In considering whether to grant past petitions for forbearance from dominant carrier regulation for switched access and loop and transport unbundling requirements, the FCC has consistently considered competitors’ market share on an MSA basis and competitors’ facilities coverage on a wire-center basis. Verizon has provided no basis for departing from this practice in the instant proceeding.

1. The FCC Should Continue to Utilize The Entire MSA As The Appropriate Geographic Market For Which To Assess Market Share Data.

Notwithstanding its vigorous support for the MSA as the relevant geographic market in the past, Verizon now argues that only those portions of the Virginia Beach MSA that are served by incumbent cable operator Cox comprise the relevant geographic market for purposes of forbearance analysis. *See* Petition at 4. Verizon obviously seeks to exclude certain portions of the Virginia Beach MSA from the forbearance analysis because the FCC already found in the *6-MSA Order* that Verizon failed to meet the forbearance standard throughout the entire Virginia

Beach MSA.³ But advancing Verizon’s narrow commercial interest cannot be the basis for changing the relevant geographic market in forbearance proceedings.

At its most basic level, Verizon’s proposal is that the Commission should gerrymander the contours of the relevant geographic market for purposes of assessing market share to include only areas where competition is greatest. The only justification Verizon provides for its decision to seek forbearance in only those areas of the Virginia Beach MSA where Cox provides service is that “MSAs themselves are simply a collection of counties and independent cities [and therefore], it is reasonable to subdivide the MSA.” Petition at 4. Taken to its logical extreme, Verizon’s argument is that forbearance should be granted in any geographic area where Verizon believes it can satisfy the market share and network coverage thresholds. This kind of result-oriented geographic market definition is inappropriate. Geographic markets should instead be defined based on objective criteria suitable to promoting reasoned decision-making in the relevant context.

The FCC’s use of whole MSAs clearly satisfies this standard, as Verizon acknowledged before its most recent round of forbearance petitions (i.e, its refiled petition for Rhode Island and the instant refiled Virginia Beach petition). The FCC has utilized MSA geographic markets in past unbundling orders because doing so permits the FCC to assess competition in an integrated economic area. The Office of Management and Budget describes an MSA as “an area containing a recognized population nucleus and adjacent communities that have a high degree of integration

³ See *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, Memorandum Opinion and Order, 22 FCC Rcd. 21293, nn.90 & 116 (2007) (“6-MSA Order”).

with that nucleus.”⁴ The integrated nature of the communities within an MSA means that customer demand for telecommunications services among multiple location businesses is often concentrated in the MSA (for example, branches of local restaurant and retail chains are often concentrated within an MSA). Moreover, media used for advertising services (such as newspapers, local television and radio stations) also tend to concentrate their coverage on most, if not all of an MSA. It is logical, therefore, for telecommunications carriers to enter markets on an MSA basis where possible because doing so enables them to offer services to all of the locations of local, multi-location businesses and to advertise the availability of such services efficiently.

In light of factors such as these, the FCC has held that carriers are likely to enter the market on an MSA basis and it has designed its regulatory framework to account for this reality. For example, in the special access *Pricing Flexibility Order*, the Commission adopted an MSA approach because it “agre[ed] with those commenters that maintain[ed] that MSAs *best reflect the scope of competitive entry*, and therefore are a logical basis for measuring the extent of competition.”⁵ The FCC mandated that carriers provide local number portability on an MSA-by-MSA basis for the same reason.⁶

⁴ OMB, *Standards for Defining Metropolitan and Micropolitan Statistical Areas*, 65 F.R. 82228 (Dec. 27, 2000), available at <http://www.census.gov/population/www/estimates/00-32997.pdf>.

⁵ *Access Charge Reform et al.*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, ¶ 72 (1999) (emphasis added) (“*Pricing Flexibility Order*”).

⁶ *Telephone Number Portability*, First Report & Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 ¶ 82 (1996). (“Thus, our deployment schedule is designed to ensure that number portability will be made available in those regions where competing service providers are likely to offer alternative services. We believe that competitive local service providers are likely to be providing service in the major metropolitan areas soon.”).

The Virginia Beach market seems to illustrate the soundness of this conclusion. For example, carriers that serve the central portions of the MSA abutting the mouth of the James River (e.g., Norfolk, Newport News, Portsmouth) that Verizon includes in its forbearance request are also likely to serve the areas slightly westward (e.g., Suffolk City and Isle of Wight) that Verizon excludes from its forbearance request.⁷ Indeed, Cavalier Telephone's website indicates that it offers service in Suffolk City as well as other portions of the MSA.⁸ All available evidence demonstrates that Suffolk City and Isle of Wight County are economically integrated with the rest of the MSA. For example, the latest Suffolk City economic activity report touts the construction of hundreds of thousands of square feet of office space meant to serve the Port of Virginia in Norfolk.⁹ Moreover, both Suffolk City and Isle of Wight County are part of the Hampton Roads Economic Development Alliance.¹⁰

⁷ See Attachment A (map showing the portions of the Virginia Beach MSA for which Verizon is seeking forbearance as well as those portions for which it is not seeking forbearance).

⁸ See Cavalier Telephone & TV, Cavalier's High-Speed Internet, <http://cms.cavtel.com/> (last visited May 9, 2008) (using a Suffolk City zip code, shows that Cavalier offers local, long distance, and broadband service in Suffolk City).

⁹ See *Suffolk Economic Activity Report: 2007 Annual Report for the City of Suffolk, Virginia, Department of Economic Development*, at 1 (February 2008), www.suffolk.va.us/econdev/documents/HiRezSuffolkEconomicActivityReport07.pdf (last visited May 8, 2008) ("The busy Port of Virginia is making waves throughout Hampton Roads, and Suffolk's economy is getting a big lift from this rising tide of commerce. Two new port-oriented commerce centers are now under construction with 785,000 square feet of speculative development. 'Our proximity to the port and the availability of land for this use makes Suffolk an attractive location for industrial activity,' said Thomas O'Grady, Suffolk's director of economic development.").

¹⁰ See Virginia's Hampton Roads Economic Development Alliance, Regional Profile, <http://hreda.com/Regional-Profile.cfm> (last visited May 8, 2008) (showing the counties and cities that are members of Virginia's Hampton Roads Economic Development Alliance).

Other evidence indicates that Suffolk City, and the locus of the MSA centered on Norfolk, are tightly connected. As the enclosed map indicates, the Hampton Roads “Beltway” encircling Norfolk passes through the northeast portion of Suffolk City, and a highway connects downtown Suffolk City with downtown Norfolk.¹¹ Much of the economic activity in Suffolk City is occurring in the Northwest corner of Suffolk City just west of Portsmouth where Verizon is seeking relief.¹² The enclosed transit map shows that while Suffolk City is served by the Hampton Roads Transit system, portions of the MSA where Verizon is seeking relief, (e.g., Gloucester, Williamsburg, York and James City) are not served by Hampton Roads Transit.¹³ The Hampton Roads Transit long range transportation plan also includes expanded service to Suffolk City.¹⁴ This demonstrates that, if anything, Suffolk City where, again, Verizon is not seeking forbearance, is more integrated with the MSA than those portions of the MSA in which Verizon is seeking relief. Moreover, the Norfolk Nielsen Designated Market Area covers an area

¹¹ See City of Suffolk, Department of Economic Development, <http://www.yessuffolk.com/maps/SuffolkMap.pdf> (last visited May 8, 2008) (map of area highways).

¹² See City of Suffolk, Department of Economic Development, Map of Major Economic Development Activity (New & Proposed) (September 2007), <http://www.yessuffolk.com/marketingbrochures/documents/RecentActivityMapAugust2007.pdf> (last visited May 8, 2008).

¹³ See Hampton Roads Transit System Map, <http://www.chesapeake.va.us/SERVICES/depart/infotech/gis/maps-pdf/Community/BusRoutes-HRT.pdf> (last visited May 8, 2008).

¹⁴ See Transportation District Commission of Hampton Roads, Proposed 20 Year Transit Plan, Hampton Roads 2030 Long Range Transportation Plan, at 33-39 (Aug. 2006), <http://www.gohrt.com/PDF/2030%20Regional%20T...-%20Full%20Plan.pdf> (last visited May 8, 2008) (describing proposed new bus routes between Suffolk City and Norfolk and other planned capital improvements to Suffolk City transit facilities).

that is actually slightly larger than the MSA, demonstrating that the MSA is centered on a single integrated media market.¹⁵

The fact that the dominant cable operator in the Virginia Beach MSA has not extended its network to cover Suffolk City and other parts of the MSA does not counsel against using MSAs as the relevant geographic market. Cable companies have generally sought to “cluster” their systems in order to take advantage of the efficiencies of providing service in an integrated community. The large cable operators have used mergers and system swaps to pursue this objective aggressively.¹⁶ Cox’s inability to achieve coverage throughout the entire Virginia Beach MSA (so far) in no way diminishes the basic logic underlying the use of whole MSAs as the relevant geographic market for purposes of assessing market share.

2. Consistent With Precedent, The FCC Should Continue To Utilize Wire Centers Rather Than Rate Centers In Analyzing Network Coverage.

Verizon argues that the Commission should also depart from prior precedent by using rate centers, rather than wire centers, to evaluate the “coverage” prong of the forbearance test. The Commission should reject this proposal.

¹⁵ See Backchannelmedia, DMA: Norfolk-Portsmouth-Newport News - Rank 42, http://research.backchannelmedia.com/dma/show/Norfolk-Portsmouth-Newport_News (showing counties and cities in the Norfolk-Portsmouth-Newport News DMA) (last visited at May 8, 2008).

¹⁶ See *Applications for Consent to the Assignment and/or Transfer of Control of Licenses; Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees; Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors and Transferors, to Comcast Corporation (subsidiaries), Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corporation, Transferee*, Memorandum Opinion and Order, 21 FCC Rcd 8203, ¶ 114 (2006) (discussing the public interest benefits and harms of cable system clustering).

In the *TRRO* and in later UNE forbearance orders, the FCC consistently used wire center geographic markets for assessing the level of competitive facilities deployment because a wire-center based analysis permitted an appropriately granular review.¹⁷ The FCC acknowledged in the *TRRO* that a building-by-building analysis would be a more accurate predictor of where loop deployment was possible, but it concluded that it was not feasible to conduct such an analysis on a nationwide basis. *See TRRO* ¶ 161. Given that these administrative concerns are not as great when examining a single MSA (rather than the entire country as the Commission did in the *TRRO*), if the FCC were to alter the scope of the relevant geographic market for purposes of assessing network coverage, it should examine areas *smaller* than wire centers. But rate centers are *larger* than wire centers (Verizon states that the 13 rate centers in Cox’s service territory in the Virginia Beach MSA consist of 39 wire centers). *See* Petition at 8.

Verizon offers no basis for questioning this conclusion. It argues that a rate center approach is appropriate because Cox “delineates its coverage areas by rate center” (*id.* at 8), noting that Cox’s website indicates that Cox “lists each of the rate centers in its Virginia Beach service territory among the ‘areas [that] are serviceable today.’” *Id.* at 6 (alteration in original). While it may be the case that in at least one instance Cox advertises its service area on a rate-center basis, this has no bearing on whether Cox is capable of providing information on the extent to which its facilities meet the 75 percent coverage test on a wire-center basis. For

¹⁷ *See Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd. 2533, ¶ 155 (“*TRRO*”) (“Although we recognize that such a test may in some cases be under-inclusive (denying unbundling in specific buildings where competitive entry is not in fact economic) or over-inclusive (requiring unbundling in specific buildings where competitive entry is in fact economic), we conclude that this approach strikes the appropriate balance and responds to the concerns expressed by the court in *USTA II*.”). *See also* Petition of *Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion & Order, 20 FCC Rcd. 19415 n.129 (2005) (“*Omaha Order*”).

example, Cox provided wire center-by-wire center coverage data in the 6-MSA proceeding for the Virginia Beach MSA and in the Omaha proceeding soon after the FCC requested the information.¹⁸

B. The FCC Should Reject Verizon's Proposed Changes To The Market Share Analysis.

Verizon asserts that the Commission should make several fundamental changes to the manner in which it conducts the market share analysis in forbearance proceedings, all of which would cause the Commission to grant forbearance in markets in which there is insufficient competition to protect consumers if unbundling of network elements no longer were required. The Commission should therefore reject all of these proposals.

1. The Commission Should Reject Verizon's Assertion That Market Share Is Irrelevant To the Unbundling Forbearance Analysis.

Verizon argues that the Commission should not consider measures of market share when assessing a request to forbear from unbundling requirements. There is no basis for this assertion. In support of its argument, Verizon relies principally on its assertion that the FCC did not consider market share when assessing whether to forbear from unbundling in the *Omaha Order* or the *Anchorage Order*, and that the Commission's consideration of market share in the *6-MSA Order* was an unjustified departure from prior forbearance decisions. But even though this argument lacks merit, it should be addressed in the appeal of the *6-MSA Order*. Moreover, there is no doubt that it makes sense for the Commission, when assessing whether to eliminate core unbundling requirements, to consider the extent to which competitors that do not rely on UNEs

¹⁸ See, e.g., *Ex Parte* Letter from J. G. Harrington, Counsel, Cox Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 06-172, at 2 (filed Oct. 30, 2007); see generally *Ex Parte* Letter from J. G. Harrington, Counsel, Cox Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 04-223 (filed Sept. 16, 2005).

have been able to compete successfully in the market. Such an inquiry should be central to any determination under Section 10 as to whether retaining unbundling is “necessary to ensure that” an ILEC offers services on rates, terms and conditions are just and reasonable and is “necessary for the protection of consumers.” *See* 47 U.S.C., §§ 160(a)(1)-(2).

2. To the Extent that “Cut-the-Cord” Wireless Customers Are Included In the Market Share Analysis At All, The FCC Should Continue to Count Such Customers Choosing Verizon Wireless As Belonging To Verizon.

As discussed *infra* in Part IV, so-called “cut-the-cord” wireless customers should be excluded from the Commission’s market share analysis altogether and, if cut-the-cord customers are counted, none of the cut-the-cord customers of AT&T Mobility should be included in the market share total of facilities-based competitors. In all events, however, the FCC should reject Verizon’s argument that the Commission should include Verizon Wireless’ cut-the-cord customers in competitors’ market share. Verizon makes two key arguments in support of its proposal, neither of which has merit.

First, Verizon asserts that “the relief sought here is for [its] wireline business, which is affected by losses to Verizon Wireless the same as if those losses were to another competitive provider . . . [T]he competition that Verizon Wireless provides in wireless affects Verizon’s wireline business, just as if Verizon Wireless were an unaffiliated competitor.” Petition at 14-15. This argument makes no sense on its face. While it might be true that Verizon’s wireline division would be hurt by losses to Verizon Wireless, Verizon Communications Inc. has a substantial interest in keeping Verizon’s wireline customers from abandoning the Verizon family of companies completely. Because Verizon Wireless is half owned by Verizon Communications

Inc., Verizon Wireless' profits directly benefit Verizon Communications Inc.'s bottom line.¹⁹ To argue that Verizon Wireless does not care which wireless providers its cut-the-cord customers choose is absurd.

Second, Verizon also asserts that its wireless affiliate has neither the incentive nor the ability to protect its wireline customer base from intermodal competition, "given the intense competition Verizon Wireless faces from other unaffiliated wireless carriers." Petition at 15.

Verizon's assertion flies in the face of prior FCC findings that ILECs and their wireless affiliates have both the incentive and ability to work together to limit access line loss.²⁰

¹⁹ See Verizon Communications Inc., 2007 Annual Report (Form 10-K), at 3 ("Wireless revenues were \$43.9 billion, up more than 15 percent in 2007, driven by the tremendous 65 percent growth in data revenues from such services as text and picture messaging, video, music, and broadband access."). See *id.* at 26 (noting that Verizon Inc. owns 55 percent of Verizon Wireless with the remainder owned by Vodafone).

²⁰ In the *Sprint/Nextel Merger Order*, the FCC explained that,

[T]he Commission determined in the *Cingular-AT&T Wireless Order* that a wireline-affiliated carrier would have an incentive to protect its wireline customer base from intermodal competition while an independent wireless carrier would not. The Applicants cite to service offerings and promotions their respective firms have undertaken that arguably have encouraged wireless substitution for wireline voice services. The Applicants present data that demonstrates that independent wireless carriers have a larger percentage of wireless-only customers than customers of ILEC-affiliated wireless carriers. Moreover, *there is no evidence that Sprint's or Nextel's mobile wireless strategies are influenced by a concern over any detrimental impact on subscription to wireline local exchange service.*

Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, Memorandum Opinion and Order, 20 FCC Rcd 13967 ¶ 142 (2005) ("*Sprint/Nextel Merger Order*") (emphasis added). See also *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, ¶ 243 (2004) ("*AT&T Wireless/Cingular Merger Order*") ("Thus, unlike Cingular whose strategies are influenced by SBC's and BellSouth's concerns about wireline revenues and access lines, AT&T Wireless is not likely to be concerned with the impact of its strategies on wireline revenues or access lines, except to the extent that they represent a potential source of new wireless

Verizon has not even attempted to explain why the FCC's prior findings on this issue are no longer valid. Nor could it. The fact is that the two national wireless carriers with ILEC affiliates in the U.S., Verizon and AT&T, both target customers with smaller minute bucket wireless plans bundled with a wireline product so that their customers will use their wireless service as a complement to, not replacement for, wireline service.²¹ Indeed, in its recent cut-the-cord survey, Verizon touted its ability to retain wireline customers through wireless/wireline bundling.²² At the same time, Sprint and T-Mobile, neither of which has an ILEC affiliate in the

customers. In fact, the documentary evidence indicates that AT&T Wireless sought to encourage mass market consumers to cut the cord.”).

²¹ See Verizon Communications Inc., 2006 Interactive Annual Report, Management's Discussion and Analysis of Results of Operations and Financial Condition, <http://investor.verizon.com/financial/annual/2006/mda01.html> (last visited May 8, 2008) (“We are also developing and marketing innovative product bundles to include local wireline, long distance, wireless and broadband services for consumer and general business retail customers. These efforts will also help counter the effects of competition and technology substitution that have resulted in access line losses, and will enable us to grow revenues by becoming a leading video provider.”). See also Marguerite Reardon, *Verizon Adds Wireless to Bundle*, *ZDNet News*, Jan. 30, 2007, http://news.zdnet.com/2100-1035_22-6154671.html (“During the second half of 2006, Verizon began offering a bundle that allowed people to talk for free between their cell phones and their Verizon home phones. It also provides a single voice mailbox that can be accessed via either service. But the service is limited to certain customers in Texas and Florida. And it doesn't yet integrate any of the broadband or TV services the company is offering.”).

Verizon also markets a low-priced wireline/200 minutes-per-month wireless plan with unlimited calling between the customer's wireless and wireline phones for \$59.99 month in-region. See Verizon Wireless Plus Home Bundle, <http://promo.verizon.com/wwbundle/?LOBCode=C&PromoTCode=MXG00&PromoSrcCode=V&POEId=VU1SP> (last visited May 8, 2008). As a result of these sorts of bundling practices, Verizon has the lowest churn rate in the industry. See Verizon 4Q 2007 Earnings Call Transcript (Jan. 28, 2008), http://seekingalpha.com/article/61897-verizon-q4-2007-earnings-call-transcript?source=side_bar_transcripts&page=2.

²² See Press Release, *Verizon, New Survey Shows 83 Percent of Consumers Continue to Rely on Landline Voice Service for Its Quality, Safety Features* (Mar. 27, 2008), <http://newscenter.verizon.com/press-releases/verizon/2008/new-survey-shows-83-percent-of.html> (“Verizon Cut-the-Cord Survey”) (“Deepening further the loyalty of our existing base of landline phone customers is essential to our bundling strategy, which seeks to deliver an array of

U.S., target (although apparently rather unsuccessfully) customers with higher minute plans to encourage customers to cut the cord.²³ These independent wireless companies are unable to entice customers with a bundle of wireless and wireline service and therefore have every incentive to encourage their customers or prospects to drop their wireline services. But Sprint's lack of a wireline affiliate is harming its ability to retain customers through bundling. This is part of the reason why Sprint experiences the highest churn rate in the industry and is suffering substantial wireless line losses.²⁴

Contrary to Verizon's assertions, as a result of its bundling practices in-region, Verizon is able to retain wireline customers while at the same time achieving a high wireless market share. There can therefore be no doubt that Verizon's bundling strategy and coordination between Verizon Inc. and Verizon Wireless provide Verizon with a substantial in-region advantage. The Joint Commenters are not suggesting that such bundling is inappropriate. Rather, it shows that Verizon Inc. does not treat Verizon Wireless as a competitor but rather as a partner in its overall

top-quality services at value-based prices,' said Marilyn O'Connell, Verizon Telecom chief marketing officer. 'These bundles are popular with consumers who believe that cable competitors can't offer the same level of reliability as we do with the traditional Verizon home phone service.'").

²³ See Kelli Grant, *Unlimited Wireless Plans Prove to Be Pricey for Most*, Smart Money, Feb. 22, 2008, <http://www.smartmoney.com/dealoftheday/index.cfm?story=20080222-unlimited-wireless-plans> (noting that Sprint was the first carrier to test market unlimited wireless calling plans); see also *Strategy Analytics: Sprint PCS Users Lead Landline Substitution While Verizon Wireless Leads Customer Satisfaction*, Business Wire, Apr. 6, 2004, <http://www.allbusiness.com/media-telecommunications/5589565-1.html>. Verizon Wireless' advantage is only magnified because carriers other than Verizon Wireless must pay inflated special access prices while Verizon Wireless' in-region special access costs are merely an internal wealth transfer.

²⁴ See Sramana Mitra, *Sprint's Imploding*, Seeking Alpha, Mar. 7, 2008, <http://seekingalpha.com/article/67627-sprint-s-imploding>. However, Sprint has been aggressive in partnering with a landline cable partner in order to offer a wireline/wireless/video bundle and reduce churn. See, e.g., Joan Egenbretson, *Multiplay Offerings Go Wireless*, Telephony Online, Sept. 10, 2007, http://telephonyonline.com/wireless/news/telecom_multiplay_offerings_go/.

goal of increasing Verizon Inc.'s profits and preventing erosion of wireline access lines.

Therefore, it remains appropriate to count Verizon Wireless' cut-the-cord customers as part of Verizon's market share and exclude them from competitor's market share.

3. The FCC Should Again Reject Verizon's Attempt To Take Into Account Carriers' Use Of Special Access In The Forbearance Analysis.

As was the case in the 6-MSA proceeding, Verizon alleges that competitors purchase a significant number of special access voice grade equivalent lines and that these lines should be considered in any assessment of competitors' market share and ability to compete without UNEs. But this argument should be rejected in here for the same reason that the FCC found such evidence to be irrelevant in the 6-MSA proceeding. As the FCC held in the *6-MSA Order*:

For the reasons set forth in the *Triennial Review Remand Order*, the Commission already has rejected the argument that use of special access, in itself, is a reason to forbear from UNE obligations, based on a number of different factors. While Verizon cites a significant amount of retail enterprise competition relying upon Verizon's special access services and UNEs, we cannot readily determine the extent to which these wholesale inputs are used to compete for local exchange services, interexchange services or mobile wireless service Furthermore, the Commission repeatedly has recognized that the availability of UNEs is a competitive constraint on special access pricing.

6-MSA Order ¶ 38.

In the instant petition, Verizon attempts to address one of the Commission's criticisms of Verizon's evidentiary proffer in the *6-MSA Order* by presenting only special access data for competitors "*other than wireless carriers.*" Petition at 31 (emphasis in original). But this attempt is unavailing. *First*, it does not cure other fundamental defects in its data, such as Verizon's failure to indicate the extent to which its special access services are used as an input for interexchange services. *Second*, Verizon has presented no evidence as to why the FCC should reverse its prior holding that "the availability of UNEs is a competitive constraint on special access pricing." *6-MSA Order* ¶ 38. *Third*, as the FCC pointed out in the *6-MSA Order*,

competitors relied heavily on UNEs instead of special access to provide service in the geographic areas at issue in that proceeding, including in the Virginia Beach MSA, and Verizon's proffered evidence fails to demonstrate that this has changed in the four months since the release of the *6-MSA Order*.

4. The FCC Should Again Reject Verizon's Attempt To Include VoIP In The Relevant Product Market.

Verizon also repeats its tired argument that customers served via over-the-top VoIP service should be included as competitors' customers in a calculation of market share for purposes of measuring competition. As Verizon concedes, the FCC excluded over-the-top VoIP from its market share calculation in the *6-MSA Order* because "there are no data in the record that justify finding that these providers offer close substitute services." *6-MSA Order* ¶ 23. In the instant proceeding, Verizon offers no basis for the Commission to reverse this finding.

Verizon argues that the FCC should reverse itself because "new" data indicates that "there are at least 20 'over-the-top' VoIP providers that currently offer services with features comparable to Verizon's wireline telephone service, at prices that typically are lower than Verizon's prices, even when the price of the underlying broadband connection needed for VoIP service is taken into account." Petition at 16. Verizon merely attaches a list of the names of these providers and the prices of their service plans, taken from their web sites, to support its argument.²⁵ Verizon's only other argument is that "the Commission itself previously has recognized that 'some proportion of mass market consumers may view certain over-the-top VoIP services as substitutes for wireline local service.'" *Id.* (citing *Verizon/MCI Merger Order* ¶ 89). But Verizon filed *nearly the exact same data and made the exact same arguments using the exact*

²⁵ See Petition, Exhibit 2 to Attachment C, Declaration of Quintin Lew, John Wimsatt, and Patrick Garzillo ("Lew/Wimsatt/Garzillo Decl.").

same language in the petitions it filed in the 6-MSA proceeding.²⁶ Perhaps Verizon hopes that the FCC has a short term memory. Indeed, in previous proceedings before the Commission, MCI, now a part of Verizon, emphasized the “multitude of limitations in ubiquity, quality, cost, and maturity that currently make VoIP services an inadequate substitute for incumbent LEC voice service in the mass-market.”²⁷

C. The FCC May Not Make Impairment Findings Or Alter The Impairment Standard In A Section 10 Proceeding.

Verizon concludes its petition with a misguided attempt to redefine the manner in which the FCC has applied the forbearance standard as applied to unbundling requirements. Verizon argues that, in the context of a forbearance petition, the FCC can remove unbundling requirements even where impairment is shown if the standards of Section 10 are met, but that the FCC may not retain unbundling obligations where competitors have not been shown to be impaired absent the UNEs in question. Even if the market share test were not met, Verizon argues that because “[t]he critical inquiry under the impairment standard is whether “‘competition is *possible*’ without UNEs” in Cox’s service territory in the Virginia Beach MSA,

²⁶ See Petition of Verizon Tel. Cos. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Virginia Beach Metropolitan Statistical Area, WC Dkt. No. 06-172, at 12 (filed Sept. 6, 2006) (“Virginia Beach MSA Petition”) (“There are more than 20 ‘over-the-top’ VoIP providers that currently offer service in the Virginia Beach MSA. As demonstrated in the charts attached as Exhibits 1 and 2 . . . these providers offer services with features comparable to Verizon’s wireline telephone service, at prices that typically are lower than Verizon’s prices, even when the price of the underlying broadband connection needed for VoIP services is taken into account In the *Verizon/MCI Order*, the Commission recognized that ‘some proportion of mass market customers may view certain over-the-top VoIP services as substitutes for wireline local service.’”).

²⁷ MCI Reply Comments, WC Dkt. No. 04-313, at 16 (filed Oct. 19, 2004). In its reply comments in the *TRRO* proceeding, MCI further explained that “VOIP is available only to those customers that first subscribe to broadband service” and that “[t]he high-speed broadband service that is required in order for VOIP to function may be cost-prohibitive for many, and maybe unattractive to many others.” *Id.* at 17.

carriers are unimpaired without access to UNEs. *See* Petition at 36-37. Based on this logic, Verizon asserts, the Commission has no choice but to grant forbearance.

But this argument is flatly inconsistent with past Commission decisions. The FCC has on more than one occasion held that it is *not permitted* to make impairment findings or to alter the impairment standard in a Section 10 proceeding.²⁸ The terms of the Act, in particular Section 251(d), support this conclusion.²⁹ The Commission reached its conclusions regarding impairment in the *TRRO*, and those impairment conclusions cannot be altered in the context of the FCC's review of a forbearance petition. Accordingly, while the Commission's assessment of a forbearance petition that seeks the elimination of unbundling is *guided* by the impairment

²⁸ *See Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415, ¶ 14 (2005) (“*Omaha Order*”) (“Accordingly, our sole task here is to determine whether to forbear under the standard of section 10 from the regulatory and statutory provisions at issue, and we do not – and cannot – issue comprehensive proclamations in this proceeding regarding non-dominance, non-impairment, or section 251(h) status in the Omaha MSA”); *See id.* nn.177 & 48 (“In today’s Order, rather than making national impairment findings, we are applying the statutory standards of section 10 in a specific geographic market. . . . [F]orbearance at issue was limited to the requirements raised in the petition.”); *Petition of ACS Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Section 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, Memorandum Opinion and Order, 22 FCC Rcd 1958, ¶ 11 (2007) (“*Anchorage Order*”) (“Our sole task here is to determine whether to forbear under the standard of section 10 from the regulatory and statutory provisions at issue, and we do not – and cannot – issue comprehensive proclamations in this proceeding regarding non-impairment status in the Anchorage study area.”); *id.* n.35 (“Thus, consistent with past practice, we do not craft any new impairment tests. We therefore reject commenters’ suggestions to the contrary.”); *see also Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Memorandum Opinion and Order, 17 FCC Rcd 27000, ¶ 14 (2002).

²⁹ *See* 47 U.S.C. § 251(d)(1)-(2) (“Within 6 months after [the date of enactment of the Telecommunications Act of 1996], the Commission shall complete all actions necessary to *establish regulations* to implement the requirements of this section In determining what network elements should be made available for purposes of subsection (c)(3) of this section, the Commission shall consider, at a minimum, whether . . . the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.”) (emphasis added).

analysis, it is not and cannot be *governed* by it.³⁰ The Commission can only assess a forbearance petition by applying the criteria set forth in Section 10.

III. VERIZON HAS FAILED TO MEET THE STANDARD APPLIED BY THE COMMISSION IN PAST UNE FORBEARANCE PROCEEDINGS

A. Verizon Cannot Demonstrate That Competitors Have Gained Sufficient Market Share To Justify Forbearance From Unbundling.

Notwithstanding its attempts to rig the market share test to ensure forbearance (or to do away with the test entirely), Verizon also asserts that the levels of competition in Cox’s service territory in the Virginia Beach MSA satisfy the test as applied by the Commission in the *6-MSA Order*. But the “evidence” Verizon proffers in support of this assertion must be rejected, because it is fatally flawed in a number of fundamental respects.

1. Verizon’s White Pages Listings Are An Unreliable Market Share Proxy.

Verizon argues that, because there is a nearly 1:1 ratio between Verizon’s own white pages listings and actual residential access lines,³¹ Cox’s residential access lines can be estimated by simply counting the number of Cox’s white pages listings. *See* Petition at 10-11. But there is no reason to believe that there is a nearly 1:1 ratio between competitors’ white pages listings and the number of competitors’ access lines.

³⁰ *See Anchorage Order* n.13 (“The Commission’s section 251(d)(2) impairment analysis, while instructive in a section 10(a) forbearance proceeding, does not bind the Commission’s forbearance review. In a forbearance proceeding, Congress has charged the Commission with determining whether the standards of section 10(a) are satisfied; those standards are not identical to the standards of section 251(d)(2). *Compare* 47 U.S.C. § 160(a) *with* 47 U.S.C. § 251(d)(2).”).

³¹ *See* Petition at 11 (claiming that “the number of residential directory listings is within 4 percent of the number of residential switched access lines”).

For example, in One Communications’ experience, the particular mix of products and services sold by a carrier can have a significant impact on the number of white pages listings per line for that particular carrier. The ratio of listings to lines even appears to vary significantly among RBOCs. While Verizon argues that almost 100 percent of its residential access lines have corresponding white page listings, Qwest has stated that “about 75% of Qwest’s residential lines are listed in the white pages directories.”³² The rate of residential access line white page listings therefore appears to vary by nearly 25 percent between two similarly situated RBOCs. There is no reason to expect (and Verizon has not offered any such reason) that this level of variance would be any smaller for a non-RBOC competitor like Cox or another CLEC as compared to Verizon. There is therefore no basis for the Commission to rely on white pages listings as a proxy for Cox’s and other competitors’ access lines, and the Commission should reject Verizon’s estimate of Cox’s market share.

³² See, e.g., Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver Metropolitan Statistical Area, WC Dkt. No. 07-97, at 11 (filed Apr. 27, 2007) (“Qwest can thereby estimate the number of lines served by such CLECs, based on Qwest’s internal data showing that about 75% of Qwest’s residential lines are listed in the white pages directories.”). The entire premise of Verizon’s argument—that “the number of residential directory listings a carrier has obtained is an accurate indicator of the number of lines it is serving” (Petition at 11)—is doubtful given that Verizon was the subject of an investigation by the Virginia State Corporation Commission for “significant and ongoing errors and omissions in the White Page directory listings of Verizon Virginia Inc. and Verizon South Inc.” See *In the Matter of Investigating Directory Errors and Omissions of Verizon Virginia Inc. and Verizon South Inc.*, VA SCC Case No. PUC-2005-00007, Order Approving Offer of Settlement, Appendix A (rel. Feb. 13, 2007), available at <http://docket.scc.virginia.gov/vaproduct/main.asp>. Under the terms of the settlement between Verizon and the Virginia State Corporation Commission, Verizon set aside \$2M to compensate individuals and businesses who experienced directory errors, including the “complete omission in the directory of a listing that was published in the telephone company records” and the “publication of a listing that was . . . no longer in the telephone company records” from 2004 to early 2007. See News Release, Virginia State Corporation Commission, *SCC Accepts Verizon Directory Error Settlement; Claims Procedure Begins* (Feb. 13, 2007), http://www.scc.virginia.gov/newsrel/c_verclaims_07.aspx.

2. Verizon's Market Share Data Is Of The Same Vintage As The Data The FCC Found To Be Insufficient To Justify Forbearance In The Entire Virginia Beach MSA.

Even if Verizon's market share data is accurate, the FCC already rejected forbearance based on data collected at nearly the same time in the *6-MSA Order*. In the *6-MSA Order*, the FCC relied on data filed by Cox on October 30, 2007. Verizon submitted its own residential line count as of September 2007.³³ In its present petition, Verizon submits its own switched access line counts as of December 2007 and Cox's white pages listings from February 2008. *See* Lew/Wimsatt/Garzillo Dec. ¶ 20. Thus, the instant petition relies on data that is only approximately three to four months more recent than the data the Commission deemed insufficient to justify forbearance in the *6-MSA Order*. It is almost certain that the change in access lines has been *de minimis* during that time period. It is for this reason that the Commission should grant the Joint Commenters' motion to dismiss or summarily deny Verizon's petition as simply an attempt to revisit the same issues addressed in the Commission's denial of the Verizon Virginia Beach MSA petition for forbearance.³⁴

3. Verizon Overstates the Percentage of Customers Who Have Cut the Cord In Cox's Territory In The Virginia Beach MSA.

Verizon argues that, based on data from a recent Centers for Disease Control and Prevention ("CDC") survey, 13.6 percent of customers in Cox's service territory in the Virginia Beach MSA had cut-the-cord and substituted wireless service for wireline service as of the end

³³ *See Ex Parte* Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 06-172, Attachment B, at 3 (filed Nov. 30, 2007).

³⁴ *See* Access Point, Inc. *et al.*, Motion To Dismiss, Or In the Alternative, Deny Petition for Forbearance, WC Dkt. No. 08-24 (filed Mar. 17, 2008).

of June 2007.³⁵ As explained above, there does not seem to be any basis for including wireless customers in the same product market as wireline service, thus obviating any consideration of the CDC December 2007 Survey. If the Commission nevertheless continues to include wireless service in the relevant market, it should reject Verizon's attempt to rely on the CDC December 2007 Survey.

To begin with, as explained by economist Joseph Gillan in a recently-completed study,³⁶ even the results of the CDC December 2007 Survey undermine the assertion that 13.6 percent of wireline customers in the Virginia Beach MSA have actually cut the cord. According to Mr. Gillan, "the FCC should not rely on the CDC [December 2007] Survey's [13.6 percent] point-estimate of wireless-only households, but should instead use the lower bound of the 95% confidence interval." Gillan Study at 1. Focusing on the confidence interval rather than the point estimate supports the conclusion that the percentage of "wireless-only" or cut-the-cord households is *not* actually continuing to increase. *See id.* at 5. Therefore, "[b]y relying on the lower bound of this interval estimate, the FCC will better protect against the risk that it is adopting an inflated estimate of the actual number of wireless-only subscribers." *Id.* at 1-2. In other words, if the Commission relies on the 13.6 percent cut-the-cord estimate in its market share calculation, as Verizon advocates in the instant proceeding, the FCC could overestimate the amount of competition in the MSA at issue and erroneously grant forbearance.

³⁵ See Petition at 12-13 (citing Stephen J. Blumberg & Julian V. Luke, Div. of Health Statistics, Nat'l Ctr. for Health Statistics, CDC, *Wireless Substitution: Early Release Estimates from the National Health Interview Survey, January-June 2007*, at 2 (Dec. 10, 2007), <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200712.pdf> ("CDC December 2007 Survey").

³⁶ See generally Gillan Associates, "Properly Estimating the Size of the Wireless-Only Market," (March 2008), WC Dkt. No. 07-97 (filed Apr. 22, 2008) (attached hereto as Attachment B) ("Gillan Study").

The characteristics of the population in Virginia further support the view that the cut-the-cord rate in the area is likely lower than the national estimate of 13.6 percent. For example, the CDC notes that younger adults are more likely to have cut the cord (*see* CDC December 2007 Survey at 3), but Virginia Beach's population of 18 to 24 year olds is only 10 percent.³⁷ Poverty also equates with a higher likelihood of cord cutting (*see* CDC December 2007 Survey at 3), but Virginia's poverty rate is below the national average.³⁸ Hispanics are also more likely to have cut the cord (*see id.*) but Virginia has a lower percentage of Hispanics than the nation at-large. *See Virginia Census Quick Facts.*

In all events, the most appropriate means of counting cut-the-cord customers in Cox's service territory in the Virginia Beach MSA would be to rely on the actual customer counts. It seems likely that Verizon retains this kind of data, and should be required to submit it in this proceeding if it does. Otherwise, the Commission should seek this information from the mobile wireless providers that operate in Cox's service territory in the Virginia Beach MSA.

4. Evidence Of Verizon's Residential Access Line Losses Is Insufficient To Justify Forbearance In The Mass Market.

Verizon claims that losses in residential access lines provide "an independent basis" on which to grant forbearance in Cox's service territory in the Virginia Beach MSA. Petition at 17. However, information regarding reductions in access lines is simply an indirect, and—as the Commission has held—imprecise, measure of market share. In the *6-MSA Order*, the FCC

³⁷ *See* U.S. Census Bureau, American Community Survey Profile 2003, Population and Housing Profile: Virginia Beach City, Virginia, <http://www.census.gov/acs/www/Products/Profiles/Single/2003/ACS/Narrative/155/NP15500US5182000810.htm> (last visited May 12, 2008).

³⁸ *See* U.S. Census Bureau, State & County Quick Facts, Virginia, <http://quickfacts.census.gov/qfd/states/51000.html> (last visited May 9, 2008) ("*Virginia Census Quick Facts*").

rejected evidence of Verizon's decline in residential access lines because "[t]here are many possible reasons for such decreases unrelated to the existence of last-mile facilities-based competition." *6-MSA Order* ¶ 32. Stated differently, "the abandonment of a residential access line does not necessarily indicate the capture of that customer by a competitor." *Id.* ¶ 39.

In any event, the cause of line losses is irrelevant. It is not disputed that Verizon has lost residential access lines in recent years or that some of those losses are due to competition in the mass market. Indeed, the FCC has already concluded that Verizon faces intramodal and intermodal competition for residential customers in the Virginia Beach MSA. *Id.* ¶ 23. The Commission has made clear, however, that the relevant inquiry is not whether Verizon has lost residential access lines, but whether Verizon's market share, based on actual line counts in the appropriately defined geographic and product markets, is sufficiently low to justify forbearance. *Id.* ¶ 27 & n.89. As the FCC held in the *6-MSA Order*, "we rely upon the actual line counts submitted on the record by each carrier that is competing in the relevant geographic and product markets to the extent such data are available." *Id.* n.89. Verizon's reliance on purported line losses are therefore little more than a red herring.

B. Verizon Has Failed to Demonstrate That Facilities-Based Competitors' Networks Have Sufficient Coverage To Justify Forbearance.

In addition to its failure to satisfy the market-share prong of the forbearance test, Verizon has also failed to satisfy the network-coverage prong. The Commission concluded in the *Omaha Order* that forbearance from unbundling obligations is only appropriate in those wire centers where the cable company "covers"³⁹ 75 percent of all residential and business "end-user"

³⁹ See *Omaha Order* n.156 ("As we use the term in this Order, an intermodal competitor 'covers' a location where it uses its own network, including its own loop facilities, through which it is willing and able, within a commercially reasonable time, to offer the full range of services that are substitutes for the incumbent LEC's local service offerings.").

customer locations. *Omaha Order* ¶ 62.⁴⁰ “End-users” includes both business and residential customer locations. But Verizon has only submitted coverage information for residential customer locations.

For example, as proof of statewide “coverage”, Verizon argues that the fact that Cox “lists each of the rate centers in its Virginia Beach service territory among the ‘areas [that] are serviceable today’” and that “all 13 rate centers within the Virginia Beach MSA are listed and included within Cox’s local calling areas” proves that “Cox offers telephone service in each of these rates centers.” *Petition* at 6-7. Even if true, this information is irrelevant to whether the coverage test is satisfied. The fact that each of the rate centers in its service territory in the Virginia Beach MSA is “serviceable” by Cox and is “listed and included within Cox’s calling areas” does not prove that Cox has “covered” 75 percent of the end-users in that rate center (or the wire centers within that rate center) with its network. Cox would have to have rates in a rate center even if it had only one customer in that rate center. Therefore, the fact that Cox has rates says nothing more than that it hopes to sell to one or more customers in the rate center. Indeed, Cox could provide separate toll-free calling areas in each of the 13 rate centers in its service territory in the Virginia Beach MSA even though Cox’s network passes few end users in each rate center. It is clear therefore that Verizon has failed to proffer sufficient information to meet the coverage test as applied by the Commission in prior forbearance orders.

⁴⁰ As the Joint Commenters have explained, this test is fatally flawed because it fails to separately account for coverage of business and residential customers. *See* Opposition of Time Warner Telecom et al., WC Dkt. No. 06-172, at 9-10 (filed Mar. 5, 2007) (“6-MSA Opposition”) (attached hereto as Attachment C); Opposition of Time Warner Telecom et al., WC Dkt. No. 07-97, at 8-9 (filed Aug. 31, 2007) (“Qwest 4-MSA Opposition”) (attached hereto as Attachment D).

C. Verizon Has Failed To Demonstrate That There Is Sufficient Competition In The Business Market In Cox’s Service Territory In The Virginia Beach MSA To Justify Forbearance.

In the *6-MSA Order*, the Commission concluded that, based on the record evidence, competition in the provision of business services by cable operators and CLECs in the Virginia Beach MSA was insufficient to warrant elimination of unbundling requirements. *6-MSA Order* ¶ 37. Verizon has provided no new evidence that would alter these findings with respect to the business market in Cox’s service territory in the Virginia Beach MSA. In fact, Verizon’s recent history of repeatedly increasing rates for business services in the state provides the most direct evidence that there is very little meaningful competition in the provision of services demanded by businesses in the Virginia Beach MSA, and in no event could Verizon meet the Section 10 standard for UNEs needed to serve such customers.

1. Verizon Has Been Repeatedly Increasing Its Rates For Numerous Business Services In Virginia.

Verizon claims that there is significant competition in the business services market in Cox’s service territory in the Virginia Beach MSA. Petition at 20-31. For example, it asserts that “there is greater competition for enterprise customers in Cox’s service territory in the Virginia Beach MSA than either in Omaha or Anchorage, both in terms of facilities coverage and in terms of retail competition.” *Id.* at 20. However, Verizon’s pricing behavior in Virginia, which encompasses the Virginia Beach MSA (which, in turn, encompasses Cox’s service territory in the Virginia Beach MSA), demonstrates the exact opposite.

A review of Verizon's state tariff filings⁴¹ reveals that the company has been consistently increasing rates for many of its business services in Virginia. Specifically, Verizon increased its rates for various business services no less than 15 times since it filed its request for forbearance in the Virginia Beach MSA on September 6, 2006.⁴² These services include business custom calling services, business fixed call forwarding, unlimited local usage, unlimited local usage and toll usage, Business Two-Point Service, IntelliLinQ BRI Service, digital data service, Frame Relay, ATM cell relay service, and private line.⁴³

Verizon implemented these frequent rate increases at the same time that it sought forbearance from the FCC on the basis that the business market in the Virginia Beach MSA was competitive. Now, Verizon continues to increase prices for business services in Virginia while simultaneously arguing before the Commission that the business market in Cox's service territory in the Virginia Beach MSA is competitive. If Verizon's claims had any merit, one

⁴¹Verizon's tariff filings are posted on the Virginia State Corporation Commission's Division of Communications web page. *See* VA SCC, Rate (Tariff) Information, <http://www.scc.virginia.gov/puc/tariff.aspx> (last visited May 9, 2008).

⁴² *See* "Telephone Company Tariff Filing Log for Tariffs Received Between 1/1/06 and 12/31/2006," at 24-25, <http://www.scc.virginia.gov/puc/tarifflog/2006log.pdf> (listing revised tariff pages filed by Verizon for business service rate increases from September 6, 2006 to December 31, 2006) (Tariff IDs 4968, 4869, 4973, and 5000); *see also* "Telephone Company Tariff Filing Log for Tariffs Received Between 1/1/07 and 12/31/07," at 19-28 <http://www.scc.virginia.gov/puc/tarifflog/2007log.pdf> (last visited May 9, 2008) (listing revised tariff pages filed by Verizon for business service rate increases in 2007) (Tariff IDs 5110, 5247, 5276, 5325, 5327, 5356, and 5391); "Telephone Company Tariff Filing Log for Tariffs Received Between 1/1/08 and 4/25/08," at 7-8, <http://www.scc.virginia.gov/puc/tarifflog/log.pdf> (last visited May 9, 2008) (listing revised tariff pages filed by Verizon for business service rate increases from January 1, 2008 to April 25, 2008) (Tariff IDs 5437, 5472, 5511, and 5512).

⁴³ While unbundled ATM, private line and Frame Relay are not directly implicated by the instant petition, the FCC has several times held that DS-1 and DS-3 loops, which are covered by the instant petition, are critical inputs for the provision of these services. *See generally AT&T Inc. and BellSouth Corporation for Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd. 5662 (2007) ("AT&T/BellSouth Merger Order"); *Anchorage Order*.

would reasonably expect that it would have been forced to lower its rates in order to attract new customers and retain existing ones. The fact that Verizon has instead been able to freely and repeatedly increase rates for one business service after another provides powerful evidence that competition in Cox's service territory in the Virginia Beach MSA is not sufficient to constrain Verizon's pricing of business services and that Verizon continues to exert market power in Cox's service territory in the Virginia Beach MSA. Moreover, Verizon has increased its rates for business services despite the fact that Cox has also increased its rates for such services in Virginia.⁴⁴ This further demonstrates that Cox's presence in the Virginia Beach market is not resulting in rate pressure on Verizon.

2. Cable Competitors Do Not Offer Sufficient Competitive Discipline In The Virginia Beach Business Market To Justify Forbearance.

As the Joint Commenters explained at length in the 6-MSA Opposition, intermodal competitors have not been competing to any significant degree in the provision of services to business customers in the Virginia Beach MSA. 6-MSA Opposition at 35-47. Specifically, there has been little support for Verizon's assertion that cable competition in the Virginia Beach MSA justifies the elimination of DS-0 loops needed to serve small businesses. *Id.* at 34-38. Moreover, in light of the apparent technical limitations of hybrid fiber-coax networks and substantial barriers to fiber deployment, there has been even less support for Verizon's similar claim with respect to DS-1 or DS-3 loops or transport. *Id.* This situation has not changed in the few months since the FCC denied Verizon's forbearance petition for the Virginia Beach MSA, and it is no different for Cox's service territory in the Virginia Beach MSA than for the larger Virginia

⁴⁴ See, e.g., "Telephone Company Tariff Filing Log for Tariffs Received Between 1/1/08 and 4/25/08," at 2, <http://www.scc.virginia.gov/puc/tarifflog/log.pdf> (last visited May 9, 2008) (listing revised tariff pages filed by Cox for an increase in business line monthly non-recurring charges and Cox Business Unlimited Calling Package on February 29, 2008) (Tariff ID 5468).

Beach MSA. In fact, rather than providing specific evidence that Cox has gained retail business market share in Cox’s service territory in the Virginia Beach MSA, or that Cox is a significant alternative source of wholesale inputs for carriers there, Verizon proffers little more than press releases and other information taken from company websites. *See, e.g.,* Lew/Wimsatt/Garzillo Dec. ¶¶ 42-46 & Exhibit 13 (including 38 pages of printouts from Cox’s website).

For example, in support of its claim that Cox has a “ubiquitous” cable network, Petition at 21, Verizon offers only the conclusory statement that “it is apparent that Cox has deployed facilities to serve enterprise customers in all locations where enterprise customers are concentrated.” *Id.* at 22. Just because Verizon says so, however, does not make it so. In the *6-MSA Order*, the FCC found that “the record demonstrates the comparatively limited role of the cable operators in serving enterprise customers in these MSAs today.” *6-MSA Order* ¶ 37. Specifically, the Commission found that “[m]ost of the cable operators state[d] that their networks are primarily in residential areas and their provision of services to enterprise customers are still in the initial stages.” *Id.* n.116. As the Joint Commenters explained in the *6-MSA Opposition*, the FCC further determined that “cable companies have remained focused on mass market, largely residential service consistent with their historic residential network footprints,”⁴⁵ and therefore, cable companies’ marketing to business customers has focused on those that are “near [the companies’] residential network[s].” *TRRO* ¶ 193. It is unsurprising, therefore, that Verizon points to Cox’s deployment of a wide area network to “the Virginia Beach school system” as a prime example of Cox’s service to business customers in the state. Petition at 24.

⁴⁵ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provision of the Telecommunications Act of 1996*, Report and Order, 18 FCC Rcd. 16978, ¶ 52 (2003), *subsequent history omitted* (“TRO”).

As with many public school systems, the Virginia Beach City Public Schools are located in residential areas throughout the state, not in a major downtown business district.⁴⁶

Verizon also points to one of Cox's "CoxSmart buildings," Continental Realty Service Inc.'s "Bridgeway Technology Center," as evidence that Cox's network reaches business customers in the areas for which it seeks forbearance. *See* Petition at 25 & Exhibit 13 to Lew/Wimsatt/Garzillo Decl. ("CoxSmart" case study). But the property described is not even located in any of the areas for which Verizon seeks forbearance. *See* Continental Realty Service, Bridgeway Technology Center, <http://www.cprealty.com/properties-com-bridgeway.html> (last visited May 12, 2008) (showing address for Bridgeway Technology Center as Suffolk, VA); *see also* Attach. A to Petition (listing Suffolk as one of the areas for which Verizon is not seeking relief). Additionally, Verizon relies on a Cox press release announcing the addition of Cox to the Government Services Administration's ("GSA") "Schedule 70 program" as evidence that Cox serves large enterprise customers. But "Cox's inclusion on multiple GSA lists"⁴⁷ is just that. The fact that Cox is one of countless suppliers which government agencies can choose for their telecommunications and information technology needs⁴⁸ says nothing about the extent to which Cox provides service to large business customers. Lastly, Verizon relies on Cox's deployment of

⁴⁶ *See* Virginia Beach City Public Schools, School Locator/Map Center, http://www.vbschools.com/map_center/locator_map/index.asp (last visited May 8, 2008) (showing map of public schools throughout Virginia Beach).

⁴⁷ *See* Exhibit 13 to Lew/Wimsatt/Garzillo Decl. (Cox press release entitled, "Cox Business Solutions Addressing Needs of Government Organizations").

⁴⁸ GSA Schedule 70 includes more than 5000 vendors. *See, e.g.,* Brad Grimes, *Is Schedule 70 the Wal-Mart of IT commodity buys?*, Gov't Computer News, June 12, 2006, http://www.gcn.com/print/25_15/40995-1.html; *see also* William Welsh, *Shop an Express-Lane Contract*, Wash. Tech., June 20, 2005, http://www.washingtontechnology.com/print/20_12/26446-1.html.

“more than 575,000 fiber optic miles in Hampton Roads” (Petition at 25) as evidence of Cox’s success in the retail business market, but as discussed *infra*, the FCC rejected as irrelevant evidence concerning the total fiber miles deployed by competitors in the *6-MSA Order*. Verizon offers no reason why the Commission should alter that approach here.

Furthermore, even if Verizon were able to demonstrate with specific evidence that Cox has a ubiquitous network in Cox’s service territory in the Virginia Beach MSA, such network coverage by a single intermodal competitor is, by itself, insufficient to meet the requirements of Section 10 for either the retail or the wholesale market. The Commission has held that the Section 10 standard is only met in the retail market if the intermodal competitor has demonstrated substantial success in winning retail market share by providing services over its own network. *See Omaha Order* ¶ 64, n.177, ¶ 69; *see also Anchorage Order* ¶ 28.

Verizon, however, has failed to provide specific data on the number of business customers Cox serves using its own facilities in Cox’s service territory in the Virginia Beach MSA. Rather, Verizon relies on the Commission’s statements in the *Omaha Order* regarding Cox’s ““strong success in the mass market”” (Petition at 23) and its ““current marketing efforts and emerging success in the enterprise market”” (*id.* at 24) in the Omaha MSA to demonstrate the existence of cable competition in Cox’s service territory in the Virginia Beach MSA. Whatever the merits of these assertions as they pertain to Omaha (all available evidence indicates that the Omaha business market remains dominated by the ILEC), there is no evidence that Cox has been successful in serving businesses in its territory in the Virginia Beach MSA. Cox itself has stated that:

Verizon vastly overstates both Cox’s capabilities and its success in the enterprise market in the Virginia Beach MSA. . . . [V]erizon’s claims regarding enterprise competition from Cox are at best unreliable and at worst willfully misleading. In

either case, the Commission cannot rely on them to grant Verizon forbearance from loop and unbundling for the enterprise market in the Virginia Beach MSA.⁴⁹

Finally, relying solely on pages from Cox’s website, Verizon asserts that “Cox provides wholesale services in ...its service territory in the Virginia Beach MSA,” and therefore, “competition in the MSA is extensive.” Petition at 26. To begin with, in the *6-MSA Order*, the FCC found that “[t]he record d[id] not reflect any significant alternative sources of wholesale inputs for carriers in the 6 MSAs,” including the Virginia Beach MSA. *6-MSA Order* ¶ 38. The situation is no different in Cox’s service territory in the Virginia Beach MSA only several months later, and Verizon has not provided any evidence to the contrary.

The Commission also concluded in the *Omaha Order* that there were no significant wholesale alternatives to Qwest in the Omaha MSA, but Verizon contends that “[t]he Commission nonetheless found that the ILEC’s ‘own wholesale offerings will continue to be adequate’ without offerings from other competitors.” Petition at 25 (quoting *Omaha Order* ¶ 67). Verizon is wrong for several reasons. *First*, even a single facilities-based competitor in the wholesale market for business services is insufficient to meet the requirements of Section 10. As the Commission has explained, it is critical that facilities-based wholesale competition “minimize[] the risk of duopoly and of coordinated behavior or other anticompetitive conduct.” *See Omaha Order* ¶ 71; *see also Anchorage Order* ¶ 46 (relying on continued rate regulation of ACS to prevent the development of an “an impermissible duopoly”). To ensure this outcome, the record must support the conclusion that there is enough facilities-based wholesale competition so that the ILEC has “the incentive to make attractive wholesale offerings” on terms and conditions that allow efficient competitors to compete even if UNEs are eliminated. *Omaha*

⁴⁹ Comments of Cox Communications, Inc., WC Dkt. No. 06-172, at 27-28 (filed Mar. 5, 2007) (“Cox 6-MSA Comments”).

Order ¶ 67. By contrast, here, as discussed above, there is scant evidence of competition in the business market in Cox’s service territory in the Virginia Beach MSA.

Second, Verizon ignores the fact that the Commission’s grants of forbearance from unbundling obligations in the *Omaha* and *Anchorage Orders* were not unconditional. Importantly, while the FCC relied in the *Omaha Order* (¶¶ 67-68) on the continued application of Section 251(c)(4) and Section 271(c) to serve as constraints on Qwest’s post-forbearance conduct, the FCC modified that precedent in the *Anchorage Order*, reflecting the implicit conclusion that Section 271-type requirements were no longer sufficient. *See Anchorage Order* ¶ 39 & n.133 (imposing an “ongoing obligation” to “provide loop access at the same rates, terms, and conditions negotiated between ACS and GCI in Fairbanks, Alaska”—rates only marginally above those for UNEs—until a commercial agreement is reached). In fact, the Commission established this condition in the *Anchorage Order* precisely to address the concerns of McLeodUSA, which had argued that “Qwest’s non-recurring charges and special access pricing in the Omaha MSA following forbearance have made it difficult for McLeodUSA to compete in that market.” *Id.* n.134.

Third, Verizon’s reliance on the *Omaha Order* is misplaced because the FCC’s prediction regarding access to wholesale inputs for business services has proven to be wrong. The FCC made a “predictive judgment” that, as a result of competition in the mass market from Cox, “Qwest will not react to our decision here [to relieve Qwest of unbundling obligations in certain wire centers] by curtailing wholesale access to its analog, DS0, DS1 or DS3-capacity facilities.” *Omaha Order* ¶ 79. As detailed by the Joint Commenters in the Qwest 4-MSA Opposition (at 41-43), McLeodUSA’s experience in Omaha demonstrates that the Commission’s prediction was erroneous. Post-forbearance, Qwest has offered McLeodUSA DS-0 and DS-1 loops only at

tariffed, special access rates that are significantly higher than cost-based UNE rates. As a result, McLeodUSA has been unable to economically serve its business customers and has publicly announced that it may have to discontinue operations in the Omaha market. *Id.* at 41-42.

3. Facilities-Based Competition From Non-Cable Competitors In The Virginia Beach Business Market Is Insufficient To Justify Forbearance.

Verizon claims that there is sufficient competition from competitors other than Cox in the Virginia Beach business market to warrant forbearance. To support this claim, Verizon makes many of the same arguments in the instant petition that it made in its 6-MSA Petitions. The majority of these arguments were rejected by the Commission in the *6-MSA Order*, however, and in the absence of any new evidence to the contrary, they should likewise be rejected here.

First, Verizon alleges that competition from the “wide variety” of “traditional telecom carriers” in Cox’s service territory in the Virginia Beach MSA is sufficient to warrant forbearance. Petition at 27. However, as explained in detail by the Joint Commenters in the 6-MSA Opposition (at 14-17), Verizon continues to control the only local transmission facilities (loops and transport) capable of serving the vast majority of business locations in Cox’s service territory in the Virginia Beach MSA, and there are substantial barriers to entry associated with self-deployment of such facilities. In the instant petition, Verizon offers no evidence that such barriers are any less significant or that competition in the local transmission market is any greater in Cox’s service territory in the Virginia Beach MSA than is the case elsewhere in the Virginia Beach MSA. Instead, just as it did in its 6-MSA Petitions, Verizon clouds the record with irrelevant and misleading information. It relies on press statements and website sales material describing the business retail service offerings of competitors, such as Cavalier and PAETEC, that rely on Verizon’s loop and transport facilities. This evidence has no relevance to whether

competitors can efficiently deploy such facilities themselves. *See* Lew/Wimsatt/Garzillo Decl. ¶¶ 47-53 & Exhibit 13.

Indeed, Verizon admits that it provides special access services to some of the “traditional telecom carriers” it cites as competitors. *Id.* ¶¶ 47, 51-53 (listing the number of voice-grade equivalent lines purchased by each carrier according to Verizon’s wholesale billing records). Of course, as discussed, in the *6-MSA Order*, the FCC relied on the *TRRO* and explicitly rejected such evidence, holding that “[w]hile Verizon can demonstrate a fair amount of retail enterprise competition using Verizon’s special access services and UNEs, *competition that relies on Verizon’s own facilities is not a sufficient basis to grant forbearance from UNE requirements.*” *6-MSA Order* ¶ 42 (emphasis added). For this reason, Verizon’s claims of purported competition from “traditional telecommunications carriers” and systems integrators—which *by definition* rely on the facilities of other carriers to provide services at retail to the business market—in Cox’s service territory in the Virginia Beach MSA must likewise be rejected. Petition at 27.

Second, Verizon offers reductions in its switched business access lines as “additional evidence that forbearance is warranted.” *Id.* at 32. However, as discussed above, the FCC already rejected evidence of Verizon’s declines in residential access lines in the *6-MSA Order* (¶ 39), and information showing switched business access line declines is even more unreliable as an indicator of Verizon’s retail business market share, because Verizon’s retail special access lines have undoubtedly increased during the same period.⁵⁰

Third, Verizon relies on the existence of competitive fiber networks in Cox’s service territory in the Virginia Beach MSA to support its petition (at 28) even though the FCC explicitly

⁵⁰ *See* Reply Comments of Verizon, WC Dkt. No. 05-25, at 1 (filed Aug. 15, 2007) (stating that “the number of special access lines Verizon provided increased by between 16 and 26 percent per year”).

rejected such evidence in the *6-MSA Order*. Specifically, the Commission found that fiber maps, the number of route miles, lists of fiber wholesalers, and counts of competitive networks “are not informative for identifying where any unbundling relief would be warranted or where a competitive carrier might serve a substantial number of buildings within a wire center.” *6-MSA Order* ¶ 40. For the same reason, Verizon’s Virginia Beach competitive fiber data must be rejected.⁵¹

Fourth, Verizon provides little support for its argument that fixed wireless is a viable alternative for business customers in Cox’s service territory in the Virginia Beach MSA. Petition at 28-29. In fact, Verizon cites two FCC decisions for its claim that fixed wireless “is now capable of providing enterprise customers with an alternative way to obtain access to voice and data services,” but the FCC never held that this is the case in those two or any of its other decisions. *See id.* & n.28. Indeed, the FCC did not even consider fixed wireless in its market share analysis in the *6-MSA Order*. The only remaining evidence offered by Verizon consists of

⁵¹ Verizon attempts to address the Commission’s criticism in the *6-MSA Order* that its previous data erroneously combined competitive fiber deployment in impaired wire centers with that in non-impaired wire centers (*see id.* ¶ 40) by arguing that “Verizon has not obtained *full* relief from its unbundling obligations in any of the wire centers in Cox’s service territory in the Virginia Beach MSA.” Petition at 28 (emphasis added). By Verizon’s own admission, however, it has received partial relief from unbundled loop or transport obligations in several wire centers in the state. *See* Exhibit 11 to Lew/Wimsatt/Garzillo Dec. (listing wire centers exempt from UNE high-cap loop and dedicated transport ordering pursuant to the *TRO*). Regardless of whether the competitive fiber deployment at issue is in impaired or non-impaired wire centers, the fact is that the Commission has expressly found competitive fiber network data to be unpersuasive. *6-MSA Order* ¶ 40. In addition, in the *6-MSA Order*, the FCC noted that Verizon had overstated the importance of such evidence because “the Commission’s reference to competitive deployment in the [*Omaha Order*] was *incidental and supplemental to the Commission’s determination that Cox was a substantial competitive threat to Qwest for higher revenue enterprise services.*” *6-MSA Order* n.131 (emphasis added). As explained above, here, Cox is hardly “a substantial competitive threat” to Verizon in the provision of higher revenue business services in Cox’s service territory in the Virginia Beach MSA. Accordingly, the competitive fiber deployment data submitted by Verizon is even less relevant here.

press releases and other information taken from the website of a few fixed wireless providers. *See id.* at 29-30 & Lew/Wimsatt/Garzillo Decl., Exhibit 13. Absent specific evidence that fixed wireless providers in Cox's service territory in the Virginia Beach MSA can provide substitutes for the DS-0, DS-1, and DS-3-based services demanded by business customers, Verizon's argument must be rejected.

IV. THE COMMISSION SHOULD MODIFY THE MANNER IN WHICH IT MEASURES COMPETITORS' MARKET SHARE AND NETWORK COVERAGE TO ACCORD WITH SOUND COMPETITION ANALYSIS.

Although the Commission has utilized sound geographic markets in its forbearance analysis, other aspects of the Commission's analytical framework for assessing ILEC unbundling forbearance requests have been seriously flawed. Most importantly, as the Joint Commenters have explained in previous filings, the Commission has failed to account for fundamental differences in product markets, it has failed to consistently apply geographic markets, and it has failed to conduct a meaningful analysis of competition in the wholesale market. Rather than repeat those arguments here, the Joint Commenters have attached hereto prior filings that explain the appropriate analytical framework for Commission consideration of forbearance petitions seeking the elimination of unbundling.⁵² As explained below, however, there are several additional modifications that the Commission should make to the forbearance framework applied in the *6-MSA Order*.

A. Mobile Wireless Service Should Not Be Included In The Same Product Market As Wireline Voice Service And Therefore Should Be Excluded From The Market Share Analysis Completely.

The FCC should reassess its conclusions in the *6-MSA Order* that wireless service can serve as a replacement for wireline phone service and that cut-the-cord wireless customers

⁵² *See* Attachment C (6-MSA Opposition); *see also* Attachment D (Qwest 4-MSA Opposition).

should be considered in the market share calculation. The Commission reached these conclusions without analyzing whether mobile wireless service belongs in the wireline voice service product market, and all indications are that they do not.

The FCC generally follows the DOJ/FTC Merger Guidelines when analyzing whether two products belong in the same product market.⁵³ Pursuant to the Merger Guidelines, a relevant product market is “a product or group of products such that a hypothetical profit-maximizing firm that was the only present and future seller of those products (‘monopolist’) likely would impose at least a ‘small but significant and nontransitory’ increase in price.”⁵⁴ It is often profitable for a monopolist to impose a nontransitory price increase on customers, even if this causes some customers to switch to other services. In other words, the monopolist will increase prices so long as the resulting loss of customers is outweighed by profits gained from increasing prices paid by those customers that continue to purchase the service in question. As explained by Dr. Kent Mikkelsen in his white paper entitled “Mobile Wireless Service to ‘Cut the Cord’ Households in FCC Analysis of Wireline Competition,” the existence of some cross-demand

⁵³ See *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd. 18433, n.83 (2005) (“*Verizon/MCI Merger Order*”); *Sprint/Nextel Merger Order* ¶ 39.

⁵⁴ DOJ & FTC, Horizontal Merger Guidelines, 57 F.R. 41552, §1.11 (1992) (rev. Apr. 8, 1997) (“Merger Guidelines”); see *id.* (“That is, assuming that buyers likely would respond to an increase in price for a tentatively identified product group only by shifting to other products, what would happen? If the alternatives were, in the aggregate, sufficiently attractive at their existing terms of sale, an attempt to raise prices would result in a reduction of sales large enough that the price increase would not prove profitable, and the tentatively identified product group would prove to be too narrow.”). The Merger Guidelines also define the relevant market as the narrowest set of products or services that meet the criteria. See *id.* § 1.0.

elasticity (e.g., “cutting the cord”) between products does not mean that they belong in the same product market.⁵⁵

Rather than apply this well-established principle, and the Merger Guidelines more generally, in the *6-MSA Order* (see n.89), the Commission simply relied on the analysis in the *Verizon/MCI Merger Order* and *AT&T/BellSouth Merger Order* to support its inclusion of wireless services in the same product market as wireline services. The relevant discussion in both of those orders is virtually identical:

[G]rowing numbers of subscribers in particular segments of the mass market are choosing mobile wireless service in lieu of wireline local services. . . . We also find that Verizon considers this growing substitution in developing its marketing, research and development, and corporate strategies for its local service offerings. Finally, we base our finding [to include mobile wireless service in the wireline product market] on the Commission’s determination in the *Sprint/Nextel Order* that Sprint/Nextel, after the merger, would likely take actions that would increase intermodal competition between wireline and mobile wireless services, as well as Sprint’s plans to focus its efforts on encouraging consumers to “cut the cord.” . . . Based on [these factors], we conclude that mobile wireless services should be included within the product market for local services to the extent that customers rely on mobile wireless service as a complete substitute for, rather than complement to, wireline service.

Verizon/MCI Merger Order ¶ 91; see also *AT&T/BellSouth Merger Order* ¶ 96.

This explanation cannot support treating mobile wireless service as a substitute for wireline voice service in the instant proceeding. Most importantly, the Commission has itself now rejected the reasoning in the *6-MSA Order*. In its recent order establishing an interim cap on the amount of high-cost support for competitive eligible telecommunications carriers (“CETCs”), the Commission explained that limiting the subsidies for CETCs made sense because “wireless competitive ETCs do not capture lines from the incumbent LEC to become a

⁵⁵ See K. Mikkelsen, “Mobile Wireless ‘Cut the Cord’ Households in FCC Analysis of Wireline Competition” (Apr. 21, 2008), WC Dkt. No. 07-97 (filed Apr. 22, 2008) (“Mikkelsen White Paper”) (attached hereto as Attachment E).

customer's sole service provider, except in a small portion of households.”⁵⁶ The Commission then concluded that “the majority of households do not view wireline and wireless services to be direct substitutes.” *CETC Interim Cap Order* ¶ 21. Moreover, the Commission rejected CTIA's use of the CDC May 2007 Survey relied upon by the Commission in the *6-MSA Order*⁵⁷—an updated version of which Verizon relies upon in the instant proceeding⁵⁸—as evidence that mobile wireless is a substitute for wireline voice service. As the Commission explained in rejecting CTIA's argument, the CDC May 2007 Survey's finding that nearly 13 percent of the population has cut the cord “fails to demonstrate that wireless ETCs are a complete substitute for wireline ETCs.” *See id.* n.63. There is no basis for concluding that the mobile wireless services that wireless ETCs offer are any different from those offered by mobile wireless providers in the Virginia Beach MSA or that the substitutability analysis would be any different in that MSA than in high-cost areas. The Commission must therefore apply the conclusions it reached in the *CETC Interim Cap Order* to the forbearance petition at issue in this proceeding.

Furthermore, the Federal-State Joint Board on Universal Service has now recommended that the Commission create separate high-cost funds for wireline voice service (i.e., the “Provider

⁵⁶ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Order, WC Dkt. No. 05-337, ¶ 20 (rel. May 1, 2008) (“*CETC Interim Cap Order*”).

⁵⁷ *See 6-MSA Order*, Appendix B, n.2 (citing CDC, *Wireless Substitution: Early Release of Estimates Based on Data from the National Health Interview, July - Dec. 2006*, at 1 (rel. May 14, 2007), available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200705.pdf>) (“CDC May 2007 Survey”) (estimating that 12.8 percent of U.S. households exclusively subscribed to a mobile wireless service as of the end of December 2006).

⁵⁸ In its petition, Verizon relies on the CDC's December 2007 Survey data, which estimates that approximately 13.6 percent of U.S. households cut the cord as of the end of June 2007. *See supra* note 35 (citing CDC December 2007 Survey); *see also* Petition at 12 (same). The CDC December 2007 Survey data could be misconstrued to support the conclusion that the rate at which households are cutting the cord is increasing, but as economist Joseph Gillan has explained, the data does not support this conclusion. *See Gillan Study* at 5-6.

of Last Resort” fund) and mobile wireless voice service (i.e., the “Mobility Fund”).⁵⁹ This proposal obviously reflects the Joint Board’s recognition that wireline and mobile voice services offer consumers *different* services and that a customer in a high-cost area that is able to receive affordable mobile voice service will still demand and need wireline voice service. That recognition accords with the Commission’s finding last year in the *Qwest 272 Sunset Order*⁶⁰ that a majority of presubscribed interexchange customers also subscribe to mobile wireless services.

Even apart from these clear and dispositive conclusions, the Commission’s explanation in the *Verizon/MCI Merger Order* and the *AT&T/BellSouth Merger Order* for treating mobile wireless services as belonging to wireline voice product market is flawed and cannot support that approach in the instant forbearance proceeding. *First* and foremost, the presence of *some* past increase in the number of customers that cut the cord does not mean that *enough* of the *existing* wireline voice customers view wireless and wireline services as substitutes to include mobile wireless in the same product market as wireline service (i.e., to prevent a monopolist serving all wireline customers from profitably imposing a significant and non-transitory rate increase on wireline customers). To begin with, the percentage of the population that has “cut the cord” in the past is not indicative of the demand elasticity for wireline service. Mikkelsen White Paper at 8. The only relevant inquiry is whether mobile wireless service constrains the prices that Qwest charges its huge number of “remaining wireline customers.” *Id.* at 9. Nor is the marginal

⁵⁹ See *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Recommended Decision, 22 FCC Rcd. 8998, ¶¶ 16-23 (2007).

⁶⁰ See *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission’s Dominant Carrier Rules As They Apply After Section 272 Sunsets*, Memorandum Opinion and Order, 22 FCC Rcd. 5207, ¶ 17 (2007) (“*Qwest 272 Sunset Order*”).

increase in the percentage of total customers that subscribe solely to mobile wireless customers relevant, because, again, the real question is whether a hypothetical monopolist in the provision of wireline service to *existing wireline customers* could profitably increase price. Such an increase in price might well increase the total number customers that cut the cord, but the increase in wireline prices would still be profitable if enough of the existing wireline customers retain that service.

Moreover, the available evidence indicates that those that purchase wireline service today are unlikely to cease purchasing wireline service in favor of mobile wireless if wireline service prices increase. Wireline voice service offers several distinct features that mobile wireless service does not offer. For example, wireline service provides, among other things, “high and consistent transmission quality,” “a common connection point for all members of a household,” and “more accurate and reliable enhanced 911 emergency capability than mobile wireless service.” *Id.* at 6-7. Existing purchasers of wireline service typically view these features as important enough that they would not cut the cord if forced to pay higher prices for wireline service. According to a recent survey of landline phone owners commissioned by Verizon, 83 percent of respondents “intend to continue using their landline home phone *indefinitely*.”⁶¹ Fully 94 percent of the survey respondents cited reliability and 91 percent cited safety as the primary reasons they retain wireline service. *See Verizon Cut-the-Cord Survey*. Importantly, 74 percent of those surveyed reported that their landline home phone service “trumped their mobile phone in terms of voice quality, reliability, and consistency of service.” *Id.*

⁶¹ *See Verizon Cut-the-Cord Survey* (reporting results of survey of more than 800 landline phone customers, 74 percent of whom also have a mobile phone) (emphasis added).

Second, the Commission’s assertion that Verizon “considers this growing substitution” in developing its marketing and corporate strategies offers little support for the inclusion of mobile wireless in the wireline voice product market. As Dr. Mikkelsen explains, “the Commission has not disclosed how or to what extent this factor enters the carriers’ strategy decisions.” *Id.* at 9. Corporate strategists “consider” many factors, and “[s]uch consideration may not provide any evidence regarding the degree of price sensitivity between wireline and mobile wireless service.” *Id.* In this proceeding, Verizon has not provided any evidence as to whether, and if so, how, it accounts for mobile wireless service in developing its marketing strategy for wireline voice service. In any event, some consideration of wireless substitution in a strategic plan does not, by itself, support the conclusion that a wireline carrier believes that wireless service constrains its ability to unilaterally increase the price of wireline service. *Id.* For example, it is possible, indeed likely, that a wireline carrier would focus its consideration of wireless on a narrow subset of customers, such as college students, that are most likely to “cut the cord.”⁶² There is every reason to believe that a hypothetical wireline monopolist could unilaterally increase wireline prices profitably, notwithstanding the possibility that such an increase might cause a narrow subset of customers to discontinue their wireline service.

Third, the Commission’s prediction in the *Sprint/Nextel Merger Order* that the combined company would position its mobile wireless service in the marketplace so as to increase the extent to which consumers view mobile wireless to be a substitute for wireline voice service has proven to be incorrect. *Sprint/Nextel Merger Order* ¶ 142. Since the merger, the combined company has experienced a multitude of well-publicized problems with its network reliability

⁶² See Gillan Study at 6 (discussing the prevalence of cut-the-cord behavior among college-age adults).

and service quality.⁶³ Given the importance of reliability among those choosing between wireline and mobile wireless voice service,⁶⁴ it is hard to see how Sprint Nextel offers anything close to a viable substitute for wireline service.

There is no evidence that any of the factors that the Commission relied upon in concluding that Sprint Nextel would increase competition with wireline service offerings post-merger has had a significant effect in that regard. The Commission concluded that, while ILEC-affiliated wireless carriers would have an incentive to avoid encouraging customers to cut the cord, it concluded that Sprint Nextel would have no similar incentive. *See Sprint/Nextel Merger Order* ¶ 142. But this does not mean that Sprint Nextel would necessarily focus its marketing efforts on convincing customers to cut the cord or that, if it did, such efforts would be successful. The Commission did state that non-ILEC affiliated wireless carriers tend to have more customers that cut the cord than ILEC-affiliated mobile wireless carriers (*id.*), but it did not specify the magnitude of the difference. More importantly, there is no basis for concluding that enough customers have cut the cord to prevent a wireline monopolist from unilaterally increasing the price of wireline service.

The Commission pointed to several of Sprint's and Nextel's pre-merger service offerings and promotions as evidence that the companies would effectively increase the level at which customers cut the cord, but none of these appear to have made much of a difference. For example, the Commission noted that Nextel offered a "Campus Unlimited Program," designed to

⁶³ See, e.g., Marguerite Reardon, *Broken Connection for Sprint Nextel*, CNET News.com, Jan. 29, 2007, http://www.news.com/2100-1039_3-6154071.html (discussing the network integration problems that caused Sprint to lose approximately 300,000 subscribers in the fourth quarter of 2006).

⁶⁴ See also Verizon Cut-the-Cord Survey (finding that 94% of respondents cited reliability as their main reason for retaining landline service).

allow customers to use unlimited mobile wireless calling within a corporate or institutional campus. *Id.* n.313. Sprint-Nextel continues to offer this service today,⁶⁵ but the service only provides connections *within* a corporate or institutional campus. It does not include any connectivity between the campus itself and the PSTN. It therefore depends on a wireline connection, and could not justify counting subscribers to that service as “cut-the-cord” customers.⁶⁶

B. Even If The FCC Defines The Wireline Voice Product Market To Include Mobile Wireless Service, Cut-The-Cord Customers Of ILEC-Affiliated Wireless Carriers Should Be Excluded From The Competitive Market Share Calculation.

In the *6-MSA Order*, the FCC reiterated its prior holding, discussed above, that ILEC-affiliated wireless carriers, like Verizon Wireless, have the incentive to protect their wireline

⁶⁵ See Sprint Nextel, Custom Network Solutions, http://www.nextel.com/en/solutions/network_security/custom_network.shtml (last visited May 12, 2008) (describing “Campus Unlimited Program”).

⁶⁶ In addition, the Commission relied on Nextel’s claim that “Nextel’s testing of advanced broadband services [] will lead a substantial portion of Nextel’s customers to cancel their DSL subscription.” *Id.* But there is no evidence that the availability of mobile broadband services has led business customers, of Nextel or any other carrier, to give up their fixed broadband service. As Dr. Mikkelsen points out, there is no reason to think that such substitution would occur given the substantial differences between xDSL and mobile wireless services. See Mikkelsen White Paper at 10. The Commission also cited to the fact that Sprint was the “first carrier to offer E911 Phase II services with a handset-based location technology.” *Sprint/Nextel Merger Order* n.313. But according to Verizon’s recent survey, the majority of landline phone customers retain landline service in large part because of its dependability and reliability in an emergency. See Verizon Cut-the-Cord Survey. Accordingly, customers do not appear to perceive the E911 service offered by Sprint (and now offered by other mobile wireless carriers) as sufficiently reliable to replace the emergency access calling available on wireline voice lines. Moreover, the Commission cited to several steps that Sprint and Nextel took to extend wireline voice features to mobile wireless service, such as offering free incoming minutes, unlimited night and weekend calls and reducing overage charges. See *Sprint/Nextel Merger Order* n.313. But, again, there is no basis for concluding that these changes had any material effect on customers’ perception of mobile wireless service as a substitute for wireline service. Nor has the Commission made any attempt to study the effect these changes have had on customer perceptions.

customer base.⁶⁷ Based on this conclusion, the Commission counted Verizon Wireless' proportion of cut-the-cord customers as Verizon ILEC customers for purposes of its market share calculation. However, the Commission included AT&T Mobility's share of the cut-the-cord customers in the total number of customers deemed to have been won by facilities-based competitors. This is so even though AT&T Mobility is affiliated with an ILEC. This differential treatment appears to be based on the Commission's assumption that ILEC-affiliated wireless carriers market and price their service in a manner that prevents customers from viewing the mobile wireless service as a substitute for wireline service within their ILEC regions, but ILEC-affiliated wireless carriers do not do this when competing outside of their ILEC regions. But there is no basis for this assumption.

Both Verizon Wireless and AT&T Mobility set their prices on a national, not regional, basis. For example, Verizon Wireless offers only "nationwide" individual and family voice plans.⁶⁸ Consistent with the trend toward nationwide, unlimited service plans,⁶⁹ Verizon

⁶⁷ See *6-MSA Order*, Appendix B, n.6.

⁶⁸ See Verizon, Voice Plans, <http://www.verizonwireless.com/b2c/store/controller?item=planFirst&action=viewPlanOverview&catType=voice&lid=/global/plans/voice+plans/view+all> (last visited May 12, 2008) (describing all voice plans). Likewise, AT&T offers only "Nation" individual and family calling plans. See AT&T, FamilyTalk Cell Phone Plans, <http://www.wireless.att.com/cell-phone-service/cell-phone-plans/family-cell-phone-plans.jsp?WT.srch=1> (last visited May 12, 2008). Both carriers recently introduced unlimited nationwide calling plans for \$99.99 per month. See Mikkelsen White Paper nn.18-20.

⁶⁹ It should be noted that these new flat-rate unlimited pricing plans are not designed to induce wireline customers to cut the cord. See, e.g., John C. Hodulik, UBS Investment Research, "US Wireless 411," at 3 (Mar. 18, 2008) ("We believe the recent launch of unlimited voice for \$100 per month at AT&T and Verizon . . . appeals largely to the high-end subscriber base and will likely have limited impact on subscriber and ARPU trends."); see also Lehman Brothers Equity Research, "Sprint Nextel Corp.," at 2 (Feb. 29, 2008) (concluding that "the impact [of Sprint's \$99 unlimited voice and data offering] will be marginal given our estimate that the universe of customers impacted represents only a low single digit percent of the entire industry's customer base").

Wireless also recently introduced three “Nationwide Messaging” plans that allow “customers to use unlimited messaging on their wireless handsets.”⁷⁰ These national pricing plans are evidence that AT&T Mobility and Verizon Wireless market and price their services outside of their ILEC territories in the same way that they market and price their services within their ILEC territories.

Accordingly, if the Commission concludes, as it has in the past and should in the future, that the services offered by Verizon Wireless and AT&T Mobility are not substitutes for, and do not belong in the same product market as, wireline voice service within these carriers’ respective ILEC territories, the Commission must treat them exactly the same way outside of their ILEC territories. For example, in the Virginia Beach MSA, AT&T Mobility prices its services in the same way that they price them in their respective ILEC territories. Since the Commission did not classify ILEC-affiliated cut-the-cord customers in-region as counting toward the market share gained by competitors in the *6-MSA Order*, the Commission must exclude the AT&T Mobility cut-the-cord customers from the competitors’ market share in Cox’s service territory in the Virginia Beach MSA.

C. The FCC Should Exclude Customers Served *Via* Verizon’s Wholesale Advantage Service From the Market Share Analysis.

The FCC must also reconsider its decision to include services offered via UNE-P replacement wholesale offerings (i.e., Verizon’s “Wholesale Advantage” service) in the relevant market for the purposes of assessing whether to retain unbundling. As explained above with respect to special access, the FCC has held that, when considering whether to forbear from unbundling, it will not consider competition from service offerings whose prices are constrained by the availability of UNEs. *See 6-MSA Order* ¶ 38. The loop component of the Wholesale

⁷⁰ See Press Release, Verizon, *Verizon Wireless Introduces Nationwide Messaging Plans* (Apr. 14, 2008), <http://news.vzw.com/news/2008/04/pr2008-04-14f.html>.

Advantage product (a loop/switching combination) is clearly constrained by the availability of unbundled DS0 loops. This is because, if Wholesale Advantage service were priced too high, competitors would have an incentive and ability to supply their own switching and combine it with a DS0 UNE loop. As with special access, therefore, customers served via UNE-P replacement products should be removed from the market share calculation.

D. The FCC Should Establish A Separate Market Share Test For The Residential And Business Markets.

In no event should the FCC consider market share data in the provision of services to residential customers in its assessment of whether to forbear from unbundling requirements for UNEs used to serve businesses (e.g., DS1 and DS3 loops). Market share must be developed separately for each relevant product market and, in all events, separately for services offered to business and residential customers.

Such an approach is consistent with the FCC's own analysis. The FCC acknowledged in the *6 MSA Order* that success in the residential market has little bearing on whether competitors can and do compete in the business market. Specifically, the FCC found that, despite fairly high residential market shares of the cable companies, "the record lacks sufficient information for us to determine the cable operators' market shares for enterprise services, [and] we find that other evidence in the record demonstrates the comparatively limited role of the cable operators in serving enterprise customers in these MSAs today." *Id.* ¶ 37. In other words, the FCC understood that cable companies could make substantial headway in the residential market and not pose a competitive challenge in the business market. The FCC should follow its analysis to its logical conclusion and perform a separate market share analysis for business and residential markets.

V. CONCLUSION

For the foregoing reasons, Verizon's petition for forbearance in Cox's service territory in the Virginia Beach MSA should be denied.

Respectfully submitted,

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